AMOCO MINERALS CO.

IBLA 83-919 Decided May 15, 1984

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring mining claims null and void ab initio, some in part and some in whole. A MC 144903, A MC 144904, A MC 144910, A MC 144911, A MC 144917, A MC 144918, A MC 164428, A MC 164439, A MC 164448, A MC 187304 through A MC 187330.

Affirmed in part, reversed in part.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- School Lands: Indemnity Selections -- State Selections

   A mining claim wholly located on land which has been segregated from mineral location by the filing of a state school land indemnity selection application is properly declared null and void ab initio.

2. Applications and Entries: Amendments -- Applications and Entries: Filing -- Mining Claims: Lands Subject to -- School Lands: Indemnity Selections -- Segregation -- State Selections

   When Arizona filed its original application for selection of land as part of its entitlement to compensation for deficiencies for school trust lands pursuant to its enabling act, the Department did not have segregation authority to protect the selections. During the promulgation of 43 CFR 2091.2-6, Arizona submitted a request to have the previous applications withdrawn, consolidated, and amended to include additional lands. This will be deemed a reapplication under the circumstances of this case, the filing of which enabled the Department to segregate the lands described therein under 43 CFR 2091.2-6. Mining claims subsequently initiated on lands that were segregated by the reapplication were properly declared null and void ab initio.

3. Mining Claims: Lands Subject to -- Mining Claims: Location -- Mining Claims: Lode Claims

   If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior

> boundary lines may be laid within or across the surface of withdrawn or segregated land, solely for the purpose of claiming unappropriated ground within the end lines to secure the extralateral rights to lode deposits apexing in the unappropriated portion of the claim. Therefore, those portions of the claims thus situated on the segregated lands are not properly declared null and void ab initio.

APPEARANCES: Ralph W. Godell, Esq., Englewood, Colorado, for Amoco Minerals Company, appellant; Fritz L. Goreham, Esq., Department of the Interior, Office of the Field Solicitor, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Amoco Minerals Company (Amoco) appeals from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated July 25, 1983, declaring certain of its Copperstone mining claims null and void ab initio, some in part and some in whole, because they are situated on land which became segregated from entry under the mining laws by the filing of State school land indemnity selection application A 17000 prior to the location of those claims.

This appeal involves lands within secs. 6 and 7, T. 6 N., R. 19 W., Gila and Salt River meridian, La Paz County, Arizona. On February 20, 1981, the State of Arizona filed, pursuant to 43 U.S.C. §§ 851, 852 (1976), a school land indemnity selection application, A 16473, which included the two subject sections. Under the provisions of the statutes, a state may acquire public lands in lieu of certain school lands which were encumbered by other rights or reservations before the state's title could attach, or were otherwise unavailable. Prior to August 1981, while such indemnity applications were being processed, the lands selected were considered open to application or entry under the various public land laws. To eliminate situations where conflicting rights could be established before the selected lands were clear listed to the state making application, the Department promulgated 43 CFR 2091.2-6, effective August 27, 1981. See 46 FR 38508 (July 28, 1981). The regulation provides in pertinent part:

> The filing of an application for selection under the provisions of Subpart 2621 of this title [State indemnity selections] shall segregate the lands described in the application from settlement, sale, locations or entry under the public lands laws, including the mining laws * * * The segregative effect of the selection applications on the public lands shall terminate upon issuance of a document of conveyance to such lands, or upon publication in the Federal Register of a notice of termination of the segregation or the expiration of 2 years from the date of the filing of the selection application, whichever occurs first.

Notice of application A 17000, consolidating lands listed in some previously filed applications, including A 16473, with other selected lands, and its August 27, 1981, segregation was provided in 46 FR 49953-49955 (Oct. 8, 1981). On November 24, 1981, BLM posted on the appropriate public land tract

index that secs. 6 and 7 were segregated from the mining laws. On certain BLM records the application's filing date was designated as October 31, 1980, which is the date of the first filing made by Arizona.

Meanwhile, Amoco entered upon the subject lands. On September 14, 1981, it located Copperstone 120, 121, 127, 128, 134, and 135, and filed with BLM the recorded notices on December 9, 1981. Copperstone 121, 128, and 135 are situated wholly within sec. 7, while Copperstone 120, 127, and 134 are partially within the section.

On February 25, 1982, Amoco located Copperstone 172 through 183 and 192 through 209, and filed the recorded notices on April 26, 1982. Of these claims, Copperstone 172, 183, and 192 are partially within secs. 6 and 7, while the remainder are totally within their boundaries.

On November 12, 1982, BLM received from Amoco recorded amended notices for Copperstone 172, 183, and 192 (thereafter designated 172A, 183A, and 192A) and recorded notices for Copperstone 173R through 182R and 193R through 209R. The lands located under Copperstone 173R through 182R and 193R through 209R are the same lands as located under Copperstone 173 through 182 and 193 through 209, respectively, but the notices differ in that the stated date of location for the latter claims is November 1, 1982. These latter notices did not mention the former locations and, consequently, they were assigned separate claim numbers. The amended notices for Copperstone 172A, 183A, and 192A were filed for the stated purpose of including additional lands. However, none of these differed from the original notices in their land descriptions.

On July 25, 1983, BLM declared Copperstone 121, 128, 135, 173 through 182, 193 through 209, 173R through 182R, and 193R through 209R null and void ab initio, and Copperstone 120, 127, 134, 172A, and 192A null and void in part as to those portions located on lands within secs. 6 and 7. 1/ Its decision was based on all the claims having been located after the subject lands were closed to mineral entry on August 27, 1981. The subject lands were "clear listed" (conveyed) to the State of Arizona on August 23, 1983.

[1] It is well established that mining claims wholly located on lands which were segregated and closed to entry under the mining laws are properly declared null and void ab initio. O. Glenn Oliver, 73 IBLA 56 (1983); J & B Mining Co., 69 IBLA 73 (1982).

1/ Appellant and BLM stipulated that the following claims are properly the subject of this appeal:

Copperstone 120 - A MC 144903
Copperstone 121 - A MC 144904
Copperstone 127 - A MC 144910
Copperstone 128 - A MC 144911
Copperstone 134 - A MC 144917
Copperstone 135 - A MC 144918
Copperstone 172A - A MC 164428
Copperstone 173R through 182R - A MC 187304 through A MC 187313
Copperstone 183A - A MC 164439
Copperstone 192A - A MC 164448
Copperstone 193R through 209R - A MC 187314 through A MC 187330

While it is not disputed that the subject lands were at some time closed to mineral entry, Amoco challenges BLM's decision that the segregation under 43 CFR 2091.2-6 remained effective beyond October 31, 1982. 2/ Amoco and BLM's respective arguments focus on a particular date when the subject lands, they assert, would have reopened to entry under the provisions of the regulation. Amoco relies on one record which reflects the application date of A 17000 as October 31, 1980. Another record indicates that the first application covering secs. 6 and 7, A 16473, was received on February 20, 1981. Yet, BLM argues that the 2-year segregation expired August 27, 1983.

[2] When the Department promulgated 43 CFR 2091.2-6, effective August 27, 1981, it explained, "The intent of the rulemaking is to expedite the in-lieu selection program through early segregation of lands desired by the State." 46 FR 38508 (July 28, 1981). The language of the regulation is clearly designed to apply the 2-year segregation period prospectively, for as of August 27, 1981, the Department was authorized to segregate lands upon the filing of an application for state in-lieu selections. See Leo Rhea Partnership, 80 IBLA 1 (1984).

The action of the Department in this case also reveals that the Department thought it appropriate to apply the segregation authority to pending applications which had been consolidated and amended. There is some precedent for the Department's posture. In State of Alaska, 73 I.D. 1 (1966), aff'd sub nom. Udall v. Kalerack, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1968), the Department determined that where an amendment to an Alaska selection application was made during a time period when the lands applied for were open to selection, even though the original application had been filed when the land was withdrawn, the amended application could be deemed the refiling of the original selection and the State's rights were determined as though the original selection had been filed then. The Department looked to the fact that the State had at all times shown its intention to acquire the selected lands, while also looking at the public policy and public interest involved.

In the subject case, the State of Arizona filed applications for selection beginning in October 31, 1980, and extending over a staggered period as particular area determinations were made. All of those applications were filed prior to the promulgation of 43 CFR 2091.2-6. Thus, the Solicitor's office accurately noted that the Arizona in-lieu selection program was operating "at a peril since right up to the date of 'clear list' an entry could be made on the selected lands and deter the selection program" (Answer at 1). Then, during the time the segregation regulation was being promulgated, Arizona requested that all but five of the previous applications be withdrawn and consolidated with additional lands into a new application A 17000. On October 8, 1981, BLM published the notice of A 17000, which had consolidated the previous applications with additional lands. 46 FR 49953 (Oct. 8, 1981).

2/ Amoco bases its appeal of BLM's decision on its assertion that "the Copperstone mining claims in question were located on or after November 1, 1982." That statement is only partially correct. While Copperstone 173R through 182R, and 193R through 209R were located on that date, all the other claims in question were located prior in time.

The notice stated that the lands described, which included the subject lands, had been segregated from settlement, sale, locations, or entry under the public land laws, including the mining laws, as of August 27, 1981.

Under the circumstances of this case, application A 17000 is deemed a reapplication, a refiling of the original applications which enabled the Department to segregate the lands described therein under 43 CFR 2091.2-6. The publication of the notice of application A 17000, and the segregation of the described lands, properly complied with the requirement of the regulation.

To construe the circumstances of this case and the segregation regulation in this manner comports with the intent of the Department when it promulgated the segregation regulation to protect the in-lieu selection program. Further, it promotes the sound policy consideration of meeting the Federal Government's obligation to the State of Arizona. In 1980 Arizona was entitled to several hundred thousand acres in deficiencies for school trust lands pursuant to its enabling act. The Federal Government, committed to resolve the deficiency, was able to "clear list" the subject lands to Arizona on August 23, 1983. This conveyance was part of an effective transfer program which resulted in the Department meeting its commitment by giving Arizona title to 187,930 acres in 1981-83. It obviously is in the public interest for the Department to meet its obligations to a sovereign State in satisfaction of the State's lawful entitlement.

Since the transfer occurred on August 23, 1983, the segregation ended at that time. 3/ See 43 CFR 2091.2-6. Amoco located the subject mining claims between September 14, 1981, and November 1982, during the time the

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3/ A regulation should be construed in a way which provides for its utilization. Applying the segregative effect of 43 CFR 2091.2-6 retroactively to the date an in-lieu selection application was originally filed, could interfere with valid rights established by third parties in the interim when the lands were, in fact, open. Or, saying, as do appellants, that the regulation applies back to the 1980 application to start the running of time on the 2-year segregation, but that the segregative effect can only operate as of Aug. 27, 1981, would result in a segregation of the involved lands for less than 2 years, and would frustrate its intended purpose. Both constructions reach equally unacceptable results -- one eliminates third party rights and the other ignores the language of the regulation, and allows the very kind of pre-emption that the regulation was written to prevent. The comments written with the final rulemaking confirm that the public is advised of the 2-year segregation at the beginning of the period of segregation and, therefore, publication at the expiration of that 2-year period is unnecessary since the public can figure the 2 years from the segregation date published in the notice. See 46 FR 38508 (July 28, 1981). The notice in the subject case identified the segregation date as Aug. 27, 1981. Therefore, the 2-year segregation ends 2 years from the August date unless, as occurred in the subject case, the land is conveyed prior to the expiration of 2 years or a Federal Register notice which terminates the segregation is published prior to the running of 2 years.

land was segregated. Accordingly, BLM properly held them null and void to the extent they were wholly situated on the segregated lands. 4/

[3] BLM, however, also declared Copperstone 120, 127, 134, 172A, and 192A null and void ab initio as to those portions of the claims on the segregated lands within secs. 6 and 7. This Board has recently held that a different rule applies where lode mining claims are only partially located on lands which were segregated and closed to entry under the mining laws. We ruled that "a locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across patented or withdrawn land to define the extralateral rights to lodes or veins which apex within the claim." Marilyn Dutton Hansen, 79 IBLA 214 (1984). See Santa Fe Mining Co., 79 IBLA 48 (1984). This principle permits development of appropriated minerals in irregular parcels of land in compliance with the statutory requirement for parallel end lines (30 U.S.C. § 23 (1976)). The Hidee Gold Mining Co., 30 L.D. 420 (1901). See Del Monte Mining Co. v. Last Chance Mining Co., 171 U.S. 55 (1898). The exterior boundary lines may be laid within or across the surface of withdrawn (or segregated) land, however, solely for the purpose of claiming unappropriated ground to secure the extralateral rights to the lode deposit. Consequently, BLM improperly held those claims null and void ab initio as to those portions of the claims situated on the segregated lands within secs. 6 and 7. However, it must be understood that appellant has acquired no rights in the surface or mineral estate of the land segregated and conveyed to the State of Arizona.

BLM, therefore, should not attempt to adjudicate the validity of such partially projected lode claims, except in the context of a mining claim contest.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as to those claims located entirely within the area affected by the segregation, and reversed as to those claims only partly intruding the segregated area.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge

4/ In order for a mining claim to be valid the discovery upon which the claim is based must be on lands open to mineral entry. If none of the lands are open to mineral entry the claim was never perfected. See El Paso Co. v. McKnight, 233 U.S. 250, 251 (1914).